2004

Allen D. Miller and Beverly B. Miller, on behalf of the Estate of Robert Miller, deceased v. Gastronomy, Inc., a Utah corporation : Brief of Appellee

Utah Court of Appeals

Nathan B. Wilcox, Heather M. Sneddon; Anderson & Karrenberg; attorneys for appellants.
Robert L. Stevens; Richards, Brandt, Miller & Nelson; attorneys for appellee.

IN THE UTAH COURT OF APPEALS

ALLEN D. MILLER and BEVERLY B. MILLER, on behalf of the Estate of Robert Miller, deceased, Plaintiffs and Appellants, vs. GASTRONOMY, INC., a Utah corporation, Defendant and Appellee.	**BRIEF OF APPELLEE / DEFENDANT** Appellate Case No. ~~20040004-CA~~ 20040233-CA

Appeal from Final Order
In the Third Judicial District Court of Salt Lake County, State of Utah
The Honorable Tyrone E. Medley, District Court Judge

Nathan B. Wilcox [6685]
Heather M. Sneddon [9520]
ANDERSON & KARRENBERG
50 West Broadway
700 Bank One Tower
Salt Lake City, Utah 84101-2006
Telephone : (801) 534-1700
Facsimile : (801) 364-7697

Attorneys for Plaintiffs/Appellants

ROBERT L. STEVENS [3105]
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main St. / P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone : (801) 531-2000
Facsimile : (801) 532-5506

Attorneys for Defendant/Appellee

IN THE UTAH COURT OF APPEALS

ALLEN D. MILLER and BEVERLY B. MILLER, on behalf of the Estate of Robert Miller, deceased, Plaintiffs and Appellants, vs. GASTRONOMY, INC., a Utah corporation, Defendant and Appellee.	**BRIEF OF APPELLEE / DEFENDANT** Appellate Case No. 20040004-CA

Appeal from Final Order
In the Third Judicial District Court of Salt Lake County, State of Utah
The Honorable Tyrone E. Medley, District Court Judge

Nathan B. Wilcox [6685]
Heather M. Sneddon [9520]
ANDERSON & KARRENBERG
50 West Broadway
700 Bank One Tower
Salt Lake City, Utah 84101-2006
Telephone : (801) 534-1700
Facsimile : (801) 364-7697

Attorneys for Plaintiffs/Appellants

ROBERT L. STEVENS [3105]
RICHARDS, BRANDT, MILLER & NELSON
Key Bank Tower, Seventh Floor
50 South Main St. / P.O. Box 2465
Salt Lake City, Utah 84110-2465
Telephone : (801) 531-2000
Facsimile : (801) 532-5506

Attorneys for Defendant/Appellee

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

JURISDICTION

This Court has pour over jurisdiction from the Utah Supreme Court under Utah Code Ann. § 78-2-2(4).

STATEMENT OF ISSUES ON APPEAL

1. Does the Utah Dramshop Act preempt plaintiffs' "first party" common law claim for the sale of alcohol to Robert Miller who allegedly died as a result of his voluntary intoxication? This issue is reviewed for correctness. *Adkins v. Uncle Bart's, Inc.*, 1 P.3d 528 (Utah 2000).

2. If plaintiffs' claim is not preempted, does Utah common law allow a "first party" claim against an alcohol provider. That is, may a claim be brought when a person voluntarily obtains and consumes alcohol from an alcohol provider and subsequently injures or kills himself as a result of his excessive alcohol consumption. This issue is reviewed for correctness. *Adkins v. Uncle Bart's, Inc.*, 1 P.3d 528 (Utah 2000).

STATUTES DETERMINATIVE OF APPEAL

The Utah Alcoholic Beverage Liability Act § 32A-14(a)-101 through 105. (Full text of the Act included in the Appendix).

STATEMENT OF THE CASE

Plaintiffs' Complaint alleges that their decedent, Robert Miller, asked for and was served an excessive amount of alcohol at defendant's restaurant and private club. Mr. Miller subsequently crashed his car and was killed. Plaintiffs' Complaint asserts a wrongful death claim based upon negligence in serving excessive alcohol.

Plaintiff's claim is referred to as a "first party" Dramshop claim because the person injured or killed voluntarily drank to excess and injured himself. The claim is distinct from "third party" claims which involve a person becoming intoxicated and then injuring or killing some other person.

Defendant moved to dismiss the Complaint based on the pleadings.

Following a hearing on the Motion, Judge Medley dismissed the case based upon two grounds:

1. Preemption by the Dramshop statutes which preclude a first party claim where a person's injuries result from his own voluntary consumption of alcohol;

2. Utah case law establishing that there is no common law negligence claim for injuries to a person who voluntarily drinks to excess.

Plaintiffs appealed Judge Medley's Order to the Utah Supreme Court. That appeal was poured over to this Court on March 23, 2004.

STATEMENT OF FACTS

Because this matter was disposed of upon the Motion for Judgement on the Pleadings, all facts properly asserted in plaintiffs' Complaint are accepted as true for the purpose of this appeal.

Plaintiffs' Complaint alleges that on August 10, 2002 Robert Miller, age 48, had dinner and nine glasses of wine at defendants' establishments known as the Market Street Grill and the Oyster Bar private club in Salt Lake City, Utah. (R. pgs. 2 and 3). The Complaint alleges that by the time he paid his last tab, he was clearly intoxicated. (R. pg. 3). The Complaint further alleges that 30 minutes after leaving defendants' establishment, Mr. Miller died in a one car accident that resulted from his voluntary intoxication. (R. pgs. 3 and 4).

The Complaint seeks damages under the Utah Wrongful Death Act (Utah Code Ann. § 78-11-7) and the Utah Survival of Actions Act (Utah Code Ann. § 78-11-12). Plaintiffs are the parents and only heirs of Robert Miller. (R. pg. 2). The Complaint states claims for relief based upon negligence. It alleges that Robert Miller ordered and was served alcohol when defendants should have known he was intoxicated. It alleges that defendant violated the Alcoholic Beverage Control Act and that defendant should have monitored his alcohol consumption and not allowed him to drive. (R. pgs. 4 and 5).

SUMMARY OF ARGUMENT

This case involves a circumstance in which an adult voluntarily chose to consume nine glasses of wine. He chose to drive while intoxicated. He caused an accident and was killed. He did not injure any third party. Plaintiffs assert a "first party" claim against the provider of alcohol. That is, they ask the Court to recognize a tort under which a person of legal age is able to voluntarily consume excessive amounts of alcohol and then sue the provider for whatever injury he does to himself.

The Utah Dramshop statute establishes when claims may be asserted against providers of alcohol. The Act only allows claims in certain specified circumstances. Interpreting the Act's provisions, the Utah Supreme Court has found that the Dramshop Act does not provide for the first party claim that plaintiffs are asserting. In subsequent case law, the Court has found that because of its comprehensive scope, the Act is properly determined to preempt any separate claims for negligence against alcohol providers who serve drinks for consumption on the premises. Plaintiffs claim was therefore properly dismissed under the doctrine of preemption.

Even if the preemption did not apply, there is no common law claim in this case. The Utah Supreme Court, following established common law principles, has consistently rejected any argument that common law Dramshop claims exist against an

establishment that provides alcohol for consumption on the premises. The only common law claim against an alcohol provider that the Court has ever allowed are in circumstances where a store sold beer to a minor and a subsequent accident resulted injuring a third party. Those cases have no application in this matter.

While a limited number of States have allowed "first party" claims against an alcoholic provider, a strong majority of States have rejected such an extension of the common law. It runs counter to basic principles of personal responsibility and proximate cause. Utah has remained with the majority of States by rejecting such a cause of action.

ARGUMENT

POINT I

PLAINTIFFS' CLAIMS IN THIS CASE ARE BARRED BY PREEMPTION UNDER THE DRAMSHOP STATUTE.

A. Plaintiffs have no claim under the Dramshop Statute.

The Utah Dramshop Statute applicable in this case is found at § 32(a)-14(a)-102. The statute provides for a cause of action against a provider of alcohol who serves an intoxicated person. However, liability is specifically restricted to damage suffered by a "third person." The Utah Supreme Court has determined that when a customer of a Dramshop becomes intoxicated and is subsequently killed due to his own

drunken driving, there is no claim. *Richardson v. Matador Steak House, Inc.*, 948 P.2d 347 (Utah 1997).

In *Richardson*, the plaintiffs were the heirs of 20 year old Berdette Richardson. Berdette, although underage, was served alcohol at the Matador's premises. After leaving the Matador, she drove her car while intoxicated. She lost control and was killed in the crash.

Plaintiffs asserted a claim under the Utah Dramshop Act. On appeal, the Utah Supreme Court, ruled that the Dramshop Act did not apply to the heirs of a person who becomes drunk and injures or kills herself. The Court found that the Act limited recovery to those third persons who were hurt or killed by the drunk driver. There was no claim under the Act for the drunk herself or her heirs.

The heirs of Robert Miller stand in precisely the same position as that of the heirs of Berdette Richardson. Robert Miller asked for and consumed alcohol that allegedly caused his intoxication. He subsequently chose to drive while drunk. He died in the resulting accident. The Dramshop statute does not allow recovery against the Dramshop by his heirs.

B. The Dramshop Statute Preempts All Common Law Claims Against Businesses That Sell Alcohol for Consumption on the Premises.

In *Richardson*, the Utah Supreme Court specifically left open the question of whether or not the Dramshop statute preempts any common law claim against an alcohol provider for consumption on the premises. The Court specifically addressed that issue in the subsequent case of *Gilger v. Hernandez*, 997 P.2d 305 (Utah 2000). That case analyzed the question of preemption under the Dramshop Act in detail. The Court concluded that although the Act did not specifically reference preemption, it did preempt any common law claims against providers of alcohol for consumption on the premises. The Court stated:

> The act evidences an overall scheme of regulation of liability for liquor providers. Its very comprehensiveness suggests a purpose and intent to preempt inconsistent common law.

Gilger, 997 P.2d at 309.

The *Gilger* case involved a "party" hosted by defendant. She charged her guests $5.00 for all the beer they wanted to drink. One of the minors at the party became intoxicated and belligerent. He ultimately stabbed the plaintiffs. The plaintiffs sued Hernandez alleging common law negligence based upon her act of providing alcohol to a minor which caused him to be intoxicated and continuing to provide alcohol after he was

drunk. As in the present case, Gilger argued that the defendant had violated the Alcohol Beverage Control Act by serving a person who was drunk.

The Supreme Court made a careful review of the Dramshop Act. It concluded that under the provisions of the Act then in effect (it had been changed subsequently) the Act did not apply to social hosts who served beer. It only provided liability for social hosts who supply "liquor." The Court concluded that because of the statutory definition of "liquor," there was no social host Dramshop liability for serving beer.

Gilger then argued that if the Act did not impose liability on a social host who served beer, then it did not preempt his claim for negligence liability against a social host serving beer. The Court rejected Gilger's arguments and stated as follows:

> The Act has specifically excluded from its civil liability provisions social hosts who served their guests only beer. Given the obviousness of this category of providers of beer, we find it equally obvious that social hosts were not unintentionally excluded from the Dramshop Acts' reach. The exclusion from Dramshop liability was explicit and as knowingly crafted as the inclusion of other providers of alcohol. The Act evidences an overall scheme of regulation

> of liability for liquor providers. Its very comprehensiveness suggests a purpose and intent to preempt inconsistent common law.

Gilger, 997 P.2d at 309.

Plaintiff's argument in the present case is substantially identical to the argument made by Gilger. Plaintiff has suggested that because the Act excludes recovery for first party claims that therefore preemption cannot apply. Plaintiff is asking this Court to ignore the far broader discussion of the doctrine of preemption presented by the Supreme Court in the *Gilger* case. Based upon its review of the law and history of the Dramshop Act, in *Gilger*, the Supreme Court found that the statute was intended as an "overall scheme for regulation of liability of liquor providers." Therefore, preemption applied.

The fact that the Act did not provide a cause of action against social providers of beer did not mean that plaintiffs would be allowed to make that claim as a general negligence claim. To the contrary, that claim by Gilger was "preempted." The same reasoning applies to plaintiffs in this case who have asserted first party liability which is also not permitted by the Act.

The Dramshop Act preempts all causes of action against those businesses or social hosts who provide alcoholic beverages for consumption on the premises. The Act

specifically excludes liability for the State through its operation of liquor stores. See Utah Code Ann. § 32A-14A-104. The Act further excludes application to stores that sell beer for off-premises consumption, such as a general food store, convenience store, etc. See Utah Code Ann. § 32A-14A-102(9). However, the remaining providers of alcohol which are those that provide alcohol for consumption on the premises are encompassed by the Act. The Act preempts any common law claim against those providers. Accordingly, plaintiffs' claims in this case are preempted by the Act.

POINT II

UNDER UTAH LAW, A PERSON WHO VOLUNTARILY CONSUMES ALCOHOL CANNOT SUBSEQUENTLY MAKE A NEGLIGENCE CLAIM AGAINST THE PROVIDER FOR INJURIES RESULTING FROM HIS VOLUNTARY INTOXICATION.

As noted above, the Dramshop statute preempts any common law claim against an alcohol provider. However, Utah law has found that even in the absence of such preemption, there is no common law claim against an alcohol provider.

The law was summarized by the Utah Supreme Court in the case of *Beach v. University of Utah*, 726 P.2d 413 (Utah 1986). In a footnote to that opinion, the Utah Supreme Court stated:

> The Dramshop Act allows third parties to recover from those improperly providing liquor, but does not allow the

> intoxicated person to recover from the provider. Therefore, one injured as a result of his or her own voluntary but unlawful intoxication would appear to be without remedy against the provider of the alcohol, either under the Dramshop Act or under common law.

Beach, 726 P.2d at 417.

Under historic common law, there was no claim against a provider of alcohol. This conclusion was based upon a lack of proximate cause. As summarized in *Adkins v. Uncle Bart's, Inc.*, 1 P.3d 528 (Utah 2000):

> At common law, third parties did not generally have a cause of action against Dramshops that provided alcohol to another who became intoxicated and caused personal injury [citation]. The legal theory behind the general rule is that when a third party is injured by an inebriated individual, it is the drinking of the alcohol not the furnishing of it, which proximately causes the injuries.

Adkins, 1 P.3d at 532.

The *Adkins* case went on to specifically conclude that no common law negligence claim could be made against an alcohol provider regardless of whether that claim was based on general negligence principles or on a violation of the Liquor Control Act. As in the present case, in *Adkins*, plaintiffs argued that the bars involved had violated specific provisions of the Liquor Control Act which prohibited serving alcohol to

a person who was already intoxicated. Adkins argued that the violation of that section was evidence of negligence per se and therefore stated a cause of action against the bars.

The Utah Supreme Court disagreed. The only private right of action for damages in the Alcoholic Beverage Control Act was found in the Dramshop liability statute. The Court reiterated the fact that there was no common law claim against Dramshops:

> We conclude that the trial court did not err in dismissing plaintiff's claim brought under § 32A-5-107 of the Liquor Control Act. Plaintiff's remedy, if any, must be found in the Dramshop Act.

Adkins, 1 P.3d at 533.

The *Adkins* Court was very clear in rejecting common law claims against alcohol providers, stating:

> We therefore conclude that because a third party cause of action against Dramshops did not exist in this State at common law, plaintiffs common law negligence claim against the Dramshop defendants was properly dismissed by the trial court.

Adkins, 1 P.3d at 533.

Plaintiffs ask this Court to restrict the *Adkins* reasoning to "third party" claims. Under this illogical argument plaintiffs acknowledge that the common law

recognized no cause of action in favor of an innocent third party who was injured by a drunk patron. But, plaintiffs argue that the common law would recognize a cause of action in favor of a person who wrongfully drinks to excess and then injures himself. Such an argument is inconsistent with the reasoning of the *Adkins* case and basic common sense. Why would the common law reward the person who violates the law and causes injury to himself while denying recovery to an innocent person?

As quoted from *Beach*, the Court has specifically stated that a person injured by his or her own voluntary intoxication would have no remedy under the common law against an alcoholic provider. Plaintiffs argument in this case is not only illogical, but also runs directly counter to the summary of the law by the Supreme Court in *Beach.*

A. The *Rees* and *Yost* Cases Provide No Support for Plaintiffs' Claim.

Much of plaintiffs' brief on appeal is devoted to their argument that the cases of *Rees v. Albertsons*, 587 P.2d 130 (Utah 1978) and *Yost v. State of Utah*, 640 P.2d 1044 (Utah 1981) somehow provide a basis for finding a common law right of action for a first party plaintiff who becomes voluntarily intoxicated and injures himself. These cases do not support such claims. They both relate to a third party claim against a retail

store which sold beer to a minor. As noted above, such claims are specifically exempted from the Dramshop statute at § 32A-14A-102(9).

In the *Rees* case, Craig Rees bought four 6-packs of beer from an Albertsons' store. Thereafter he bought a fifth of liquor from a State store. He and his three friends drank the alcohol. He drove through Logan Canyon where he lost control of the car hitting a tree. His friends riding with him were injured or killed. They or their heirs asserted claims against Rees. These claims were settled. The case was an action for contribution against Albertsons alleging that it was negligent in its sale of the alcohol and should pay part of the settlement. It predated the Liability Reform Act of 1986 so that joint and several liability applied and contribution claims were allowed.

Albertsons was being sued for contribution alleging that it was a joint tort-feasor with regard to the claims of the injured third parties. There was no claim asserted by Rees against Albertsons for his own injury as a first party claim against the alcohol provider. The claims at issue were all third party claims.

The *Yost* case is essentially identical. In *Yost*, Steve Hammon, an 18 year old, was the one who had purchased the beer and was driving the vehicle when the accident occurred. Yost who was riding in the vehicle was hurt in the accident. He sued Hammon and the businesses and entities that had sold the alcohol to Hammon. It was a

third party claim based upon a sale of beer by a store to an underage purchaser. Relying on the *Rees* case, the Court allowed the claim.

Neither the *Rees* nor *Yost* cases involved any recognition of a first party claim against an alcohol provider. Plaintiffs' citation of *Horton v. Royal Order of the Sun,* 821 P.2d 1167 (Utah 1991) to suggest that either of these cases recognized first party claims is wrong. There were no first party claims in the cases.

The limited scope of the *Rees* and *Yost* cases was recognized by the Utah Supreme Court in *MacKay v. 7-Eleven Sales Corp.*, 995 P.2d 1233 (Utah 2000). That case, which was decided at virtually the same time as *Gilger* and *Adkins,* summarized the *Rees* and *Yost* cases as follows:

> These two cases recognize a cause of action in favor of a third person against a vendor of alcohol who sells the same negligently and in violation of a statute to an underage purchaser, who becomes intoxicated and causes injury to a third person.

MacKay, 995 P.2d at 1235.

The *MacKay* decision noted the specific statutory exemption from the Dramshop Act for claims involving retail sale of beer by stores. The case again involved a third party claim based upon the sale of beer from a convenience store to a minor. It has nothing to do with any first party claim.

The *Rees* and *Yost* cases were specifically discussed in *Adkins*. They did not change the *Adkins'* Court conclusion that in the case of a bar serving excessive amounts to an intoxicated patron, "plaintiffs had no cause of action under the Liquor Control Act or at common law based on negligence." 1 P.3d at 537.

B. Case Law from Other Jurisdictions Strongly Supports the Rule That There Is No First Party Claim Against an Alcohol Provider.

As noted above, the Utah Supreme Court has stated that there is no common law claim against a seller of alcohol for consumption on the premises. Plaintiffs' brief has suggested this Court should turn to cases outside the State to somehow justify such a claim in the first party context. Plaintiffs' lead case in this regard, *Lyons v. Nasby*, 770 P.2d 1250 (Colo. 1989) was not adopted or followed by the Utah Supreme Court in its three decisions on alcohol liability in 2000: *Adkins*, *Gilger* and *MacKay*. The decision was founded on Colorado law, that unlike Utah law, allowed a third party negligence claim against a liquor provider. See *Lango Corp. v. Crespin*, 727 P.2d 1098 (Colo. 1986).

The *Lyons* case, however, is an aberration in Colorado law. It was a four to three split decision of the Colorado Supreme Court which overturned a unanimous decision of the underlying appellate Court that rejected such liability. Additionally, the Colorado Legislature, subsequent to the events of *Lyons*, had specifically eliminated any

common law claim for first party liability by statute. The lengthy dissent in *Lyons*, written by Justice Rovira and joined by two of his fellow Justices, outlines what is the majority position across the Country regarding claims of first party liability against Dramshops. Summarizing his view, Justice Rovira stated:

> The concerns of public policy do not extend to protect an intoxicated adult from the results of his own intoxication. A person who intends to drink, before he picks up that first glass of liquor, should be aware that he is solely responsible for whatever havoc he may wreak upon himself. To give such person a cause of action against the provider shifts the responsibility from the imbiber, and says that to this extent the consumer need not be responsible. Any shifting of the blame from the intoxicated person, especially an intoxicated driver, is contrary to sound public policy.

Lyons, 770 P.2d 1262 (Rouira, J., dissenting).

Such reasoning is entirely consistent with the law of the State of Utah. A person who is voluntarily intoxicated is nevertheless fully responsible for his own actions in tort. A drunk driver cannot avoid a DUI citation by explaining that he was drunk and therefore not in proper control of his faculties. In fact, not only is a drunk driver who injures another person fully responsible for the consequences of his tort, but he is also likely liable for punitive damages. Utah Code Ann. § 78-18-1(1)(b).

In *Bridges v. Park Place Entertainment*, 860 So. 2d 811 (Miss. 2003), the Mississippi Supreme Court surveyed and summarized case law from throughout the United States regarding the issue of first party claims against Dramshops. It rejected such claims. It reviewed a lengthy list of controlling cases throughout the Country that rejected such claims. The decision concluded: "a majority of the States which have addressed this issue do not recognize a first party cause of action against the vendor of alcoholic beverages" while noting "only a small minority of jurisdictions have extended the liability of the seller of the intoxicants to allow a cause of action in favor of the intoxicated adult." *Bridges*, 860 So. 2d at 817.

Utah, in *Beach* and *Adkins,* has followed the majority position.

CONCLUSION

Utah's law regarding first party claims against a Dramshop was succinctly summarized in the case of *Beach v. University of Utah:*

> One injured as a result of his or her own voluntary but unlawful intoxication would appear to be without remedy against the provider of the alcohol, either under the Dramshop Act or under common law.

This rule was reaffirmed by the Utah Supreme Court in *Adkins, Gilger* and *MacKay* in January, 2000. This group of three cases stands for the proposition that the Dramshop statute has preempted all common law with regard to liability of bars and

restaurants that sell alcohol for consumption on the premises. There is no common law claim to be made against such an alcohol provider.

Utah's established law is consistent with the majority of the cases across the Country and common sense. Plaintiff's Complaint was properly dismissed.

DATED this 23 day of September, 2004.

RICHARDS, BRANDT, MILLER
& NELSON

ROBERT L. STEVENS
GEORGE T. NAEGLE
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two true and correct copies of the foregoing instrument was mailed, first-class, postage prepaid, on this 28 day of September, 2004, to the following:

Nathan B. Wilcox
Heather M. Sneddon
ANDERSON & KARRENBERG
50 West Broadway
700 Bank One Tower
Salt Lake City, Utah 84101
Attorneys for Plaintiffs

G \EDSI\DOCS\08692\0720\EE5635 WPD

APPENDIX

CHAPTER 14
DRAMSHOP LIABILITY [RENUMBERED]

32a-14-101, 32a-14-102. Renumbered as § § 32A-14a-102 and 32A-14a-104. 2000

CHAPTER 14a
ALCOHOLIC BEVERAGE LIABILITY

Section

32A-14a-101. Definitions.

As used in this chapter:

(1) "Death of a third person" includes recovery for all damages, special and general, resulting from such death, except punitive damages.

(2) (a) "Injury" includes injury in person, property, or means of support.

(b) "Injury" also includes recovery for intangibles such as mental and emotional injuries, loss of affection, and companionship. 2000

32A-14a-102. Liability for injuries and damage resulting from distribution of alcoholic beverages -- Causes of action -- Statute of limitations -- Employee protections.

(1) (a) Except as provided in Section 32A-14a-103, a person described in Subsection (1)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section 78-11-6.5, of that third person; or

(ii) for the death of a third person.

(b) A person is liable under Subsection (1)(a) if:

(i) the person directly gives, sells, or otherwise provides an alcoholic beverage:

(A) to a person described in Subsection (1)(b)(ii); and

(B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products;

(ii) those actions cause the intoxication of:

(A) any individual under the age of 21 years;

(B) any individual who is apparently under the influence of intoxicating alcoholic products or drugs;

(C) any individual whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs; or

(D) any individual who is a known interdicted person; and

(iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic beverage.

(2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section 78-11-6.5, of that third person; or

(ii) for the death of the third person.

(b) A person is liable under Subsection (2)(a) if:

(i) that person directly gives or otherwise provides an alcoholic beverage to an individual who the person knows or should have known is under the age of 21 years;

(ii) those actions caused the intoxication of the individual provided the alcoholic beverage;

(iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic beverage; and

(iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic beverage as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products.

(3) Except for a violation of Subsection (2), an employer is liable for the actions of its employees in violation of this chapter.

(4) A person who suffers an injury under Subsection (1) or (2) has a cause of action against the person who provided the alcoholic beverage in violation of Subsection (1) or (2).

(5) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.

(6) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 1998, is limited to $500,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to $1,000,000.

(7) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

(8) (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.

(b) Any cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (6).

(c) Any cause of action brought under this chapter is exempt from Sections 78-27-37 through 78-27-43.

(9) This section does not apply to a general food store or other establishment licensed under Chapter 10, Part 1, to sell beer at retail for off-premise consumption. 2000

32A-14a-103. Employee protected in exercising judgment.

(1) An employer may not sanction or terminate the employment of an employee of a restaurant, airport lounge, private club, on-premise beer retailer, or any other establishment serving alcoholic beverages as a result of the employee having exercised the employee's independent judgment to refuse to sell alcoholic beverages to any person the employee considers to meet one or more of the conditions described in Subsection 32A-14a-102(1).

(2) Any employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

2000

32A-14a-104. Governmental immunity.

No provision of this title creates any civil liability on the part of the state or its agencies and employees, the commission, the department, or any political subdivision arising out of their activities in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of alcoholic beverages. 2000

32A-14a-105. Action for contribution by provider of alcoholic beverages.

(1) (a) Except as provided in Subsections (2) and (3), a person, as defined under Subsection 32A-14a-102(1), (2), or (3), against whom an award has been made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which any person causing the injury and damage may be liable to any person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

(a) any person entitled to recovery as described in Subsection 32A-14a-102(1)(a)(i) or (ii); or

(b) any person entitled to recover as described in Subsection 32A-14a-102(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to any person entitled to recover as described in Subsection 32A-14a-102(1)(a)(i) or (ii) or 32A-14a-102(2)(a)(i) or (ii):

(a) in a cause of action brought under this chapter; or

(b) in a separate cause of action for injury and damage that is not brought under this chapter. 2000